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**Negotiable Instruments (1959-1967)**

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Before leaving on an extended trip abroad, A signed a number of checks in blank and put them in his safe. He instructed his bookkeeper to fill in the checks from time to time to meet his farm payrolls. On a week-end a burglar broke into the office and into the safe, took the checks and used A's check-writer to fill in the checks for $100 each. Later the burglar negotiated these checks for value to innocent merchants. The merchants deposited the checks in the First National Bank, which charged the checks against the account of A.

On the same occasion the burglar found ten $20 bills in the safe which he also used to purchase goods from a merchant who acted in good faith as A had in his possession the serial numbers of these bills.

The burglar found a $300 check payable to the order of A and endorsed in blank by A lying in the letter basket on A's desk. The burglar used this check to make a down payment on an automobile.

A brought actions against (1) the First National Bank to require it to credit his account with the amount of the stolen checks for which it had debited his account, and (2) sued the merchant in trover for the ten $20 bills, and (3) sued the automobile dealer for the $300.

How should the court rule on these three actions?

NEGOTIABLE INSTRUMENTS (1) Section 15 of the N.I.L. reads, "When an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery." There has been great conflict of authority as to how this section should be applied. As to the drawee bank the better view is that the drawee bank is not a holder since the instrument is not negotiated to it but presented to it for payment. It has no means to detect the invalidity of the instrument so the loss should be on the person who made it possible. That person, as a part of his contract of deposit, impliedly promised the bank not to expose it to unreasonable liability by signing blank checks.

(2) and (3) A's equity of ownership was cut off in both cases by a negotiation to a holder in due course.

Question 6 on p.474 (Negotiable Instruments) U.C.C.#3-407(3) reverses the rule set forth in Section 15 of the N.I.L. The U.C.C. now reads, "A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed. Hence A is not entitled to any relief as against the bank. As for the money, that is negotiable at common law. (The U.C.C. does not apply to money). As for the $300 check indorsed in blank by A, that was bearer paper and could be negotiated by delivery only. By U.C.C.#3-305 a holder in due course takes the instrument free from all claims to it on the part of any person.
7. C executed an instrument in form as follows: "On or before Jan. 1, 1956, I promise to pay to the order of B the sum of five hundred dollars, with interest at 5 per cent. (signed) C."

B, who is 18 years of age, endorsed the instrument in blank and for value delivered it to R. R, for value, endorsed the same as follows: "Pay to the order of X, without recourse on me. (signed) R." and delivered the same to X.

The debt, evidenced by the instrument, was not paid and X sued C and B upon the instrument, after giving notice to B of non-payment. C pleaded no consideration and that X was not a holder in due course. B pleading infancy.

(1) Is C liable? (2) Is B liable?

(NEGOTIABLE INSTRUMENTS) The instrument is negotiable as it may be made payable on or before a certain time at the option of the holder without destroying negotiability (Section 4 of N.I.L.). An indorsement without recourse is not enough in itself to warn the indorsee that something may be wrong. It follows that

(1) C is liable to X as X is a holder in due course and takes free from the defense of no consideration. An infant has the power to transfer his interest to another.

(2) B is not liable as he has the real defense of infancy.

Question 7 on p. 475 (Negotiable Instruments) would be answered the same way under the U.C.C. Section 3-109(1)(a) reads, "An instrument is payable at a definite time if by its terms it is payable on or before a state date ***."
8. On December 1st, John Flippen drew a check on Third National Bank payable to Herman Upcreech in the sum of $500. The check was delivered by Flippen to Upcreech as a down payment on a grand piano. On receipt of the check, Upcreech went directly to the Cashier of the Bank and had the check certified. On December 2nd, Upcreech by endorsement and delivery negotiated the check for value to Herbert Sunday. Also on December 2nd, Flippen having learned that Upcreech was a person of bad moral character, ordered the Bank to stop payment on the check. On December 3rd, when Sunday presented the check to the Bank for payment, payment was refused. Sunday on the same day asked your advice on whether he could recover from (a) Flippen, (b) the Bank, or (c) Upcreech. What should you have advised him as to each?

(NEGOTIABLE INSTRUMENTS) (a) He cannot recover from the drawer, Flippen. When the payee had the check certified the drawer was discharged. It is the same as if payee had cashed the check, and then, with the proceeds thereof, had bought the Bank's paper. See N.I.L. section 188 or V#6-542. (b) Sunday may recover from Bank. It became primarily liable when it certified the check, and presumably charged Flippen's account at that time. (c) Since Upcreech indorsed after certification he added his secondary liability to the Bank's primary liability and will be liable if proper proceedings on dishonor are taken.

Q.8 on p.491 (Negotiable Instruments) (a) Same answer for same reason under U.C.C. #3-411(1). (b) Same answer for same reason under U.C.C.#3-411(1), "Certification of a check is acceptance. Under U.C.C. #1-303 a drawer cannot stop payment on a check after it has been certified." (c) Same answer for same reason. U.C.C.#3-411(1) reads in part, "Where the holder procures certification the drawer and all prior indorsers are discharged. Upcreech was not a prior indorser and hence is liable if proper proceedings on dishonor are taken.

9. On November 2, 1959, Sam Toney signed a contract of purchase by which he believed he acquired title to a 1957 Oldsmobile from Simon Bunch. On being delivered the vehicle on the same day, Toney executed and handed to Bunch his negotiable promissory notes in the sum of $1,850 payable on December 2, 1959. On November 3rd, Bunch endorsed and delivered the note to Good Car Corporation as the purchase price of a used automobile in which Bunch promptly drove off to parts unknown. On November 12th Good Car Corporation endorsed and delivered the note for value to Ray Thomas, an old acquaintance of Bunch. On December 1st, when State Police seized the Oldsmobile, Toney for the first time learned that the car purportedly sold him had not belonged to Bunch but that the latter had stolen it. Having this knowledge, Toney refused to honor the note when Thomas presented it to him for payment on December 2nd. Thomas at once brought an action against Toney on the note in the Law and Equity Court of the City of Richmond. Toney has employed you to represent him in defense of the action. He informs you of the foregoing facts and states that it can be shown that, although Good Car Corporation knew nothing of the unlawful conduct of Bunch at the time it received the note, Thomas did know of Bunch's fraud when Thomas acquired the note. He further tells you that Thomas did not aid Bunch in the commission of the fraud. What defense, if any, may Toney make to the action on the note?

(NEGOTIABLE INSTRUMENTS) None. The Good Car Corporation was a holder in due course and has the whole world (with the exception of Bunch and persons in collusion with him) for a market. Thomas traces his title through a holder in due course and hence has all the rights of such a holder. See sections 57 and 58 of the N.I.L. or V#6-409 and 410.

Q.9 on p.492 (Negotiable Instruments) Same answer for same reason under U.C.C. #3-201(1) which reads as follows: "Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.
6. Hemlock requested Solar to execute a negotiable promissory note, and Hope to endorse it in blank, each for the accommodation of Hemlock. This they did, and Hemlock then sold the note for value to Bristol Bank and Loan Co., which had knowledge that Solar was an accommodation maker and that Hope was an accommodation endorser. The note was not paid at maturity, and the Bristol Bank and Loan Co. sued Solar and Hope, each of whom defended on the ground that the Bristol Bank and Loan Co. was not a holder in due course, as it had notice of the accommodation which constituted an infirmity in the paper. Is this valid defense?

(NEGOTIABLE INSTRUMENTS) No. The accommodating parties have impliedly requested any one who wishes to give value on the faith of their signatures to do so. When the Bank purchased the note it acted on the request and suffered a legal detriment, and in so doing provided the consideration needed to support the promises of the defendants to honor the note as per their agreement.

Q. 6 on p.506(Negotiable Instruments) Same answer for the same reason under U.C.C. §3-415(2) which reads, "Where the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation."

7. Smith executed his negotiable promissory note to Brown, in the amount of $1,000, payable sixty days after date at The Virginia National Bank. The note contained the usual provision of waiver of presentment, protest and notice of dishonor. Before maturity, Brown for value negotiated the note by endorsement to The Virginia National Bank, which held the note on its maturity date. On the maturity date, Smith had on deposit with The Virginia National Bank, in a checking account, the sum of $1,500. Two days after the maturity of the note, Smith withdrew all of the funds from his checking account. Shortly thereafter the Bank called upon Brown for payment. Brown refused to pay, and the Bank sued him upon the note. May the Bank recover?

(NEGOTIABLE INSTRUMENTS) No. Section 70 of the N.I.L. provides that if a note is payable at a special place, and if the maker is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender. Section 87 provides that where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same. While the defenses of no presentment and no notice of dishonor have been waived, that of tender has not. A valid tender discharges persons secondarily liable. It was the bank's folly not to charge Smith's account on the maturity date of the instrument.

Q. 7 on p.507(Negotiable Instruments) Virginia has changed two sections of the U.C.C. so that the Virginia law is different from that of other states. By U.C.C. §3-121 as adopted in Virginia "A note or acceptance which states that it is payable at a bank is not of itself an order to the bank to pay it, but the bank may consider it an authorization to pay". And by U.C.C. §3-604(3) as adopted in Virginia there is no tender by a maker or acceptor by the fact that he has funds at the bank at which the instrument is payable when it is due unless he has specifically ordered the bank to make payment out of such funds. Despite the above, the result reached in the N.I.L. answer would still be the same. At the date of maturity of the note Bank owed Smith $1500, and Smith owed Bank $1,000. Bank had a common law banker's lien (really a right of set-off) which it could have used as security. When it released the security by allowing Smith to check out the $1500 on deposit without the consent of the indorser(surety) the latter was discharged on common law suretyship principle.
7. Bragg seeks your advice about the advisability of purchasing from Pepper, at a very attractive discount, the following instrument:

"Salem, Virginia

I promise to pay Salter, or order, $1,000 on Nov. 6, 1961, plus interest at 6% payable semi-annually.

(a) In the event of default in the payment of any interest installment, the entire principal amount shall become due and payable.

(b) In the event of default of payment of principal at maturity, the three certificates of stock in I.B.M. Corp., pinned to this note, may be sold by the holder on account of this obligation.

(c) This note is secured by deed of trust on the farm 'Blackswan,' recorded in the Clerk's office of the Circuit Court of Roanoke County.

(d) The maker and endorsers waive the benefit of their homestead exemption as to this debt.

Adam Mustard"

On the back of the instrument appear the signatures of Salter and Pepper. Bragg tells you that he knows nothing about Mustard or the circumstances of the execution of the instrument or of its transfer to Pepper, but he knows Salter and Pepper to be substantial businessmen. He wishes to know whether the provisions in any of paragraphs (a), (b), (c), (d), or (e) the fact that the instrument is not dated, or (f) the fact that the place of payment is not specified, renders the instrument non-negotiable. What would you advise him with respect to each question?

(NEGOTIABLE INSTRUMENTS) I would advise him that none of the facts stated from (a) through (f) would render the instrument non-negotiable.

a) This is permitted by V§6-354(3) and by the last paragraph of V§6-356.

b) V§6-357 reads in part, "But the negotiable character of an instrument otherwise negotiable is not affected by a provision which: (l) Authorizes the sale of collateral securities in the case the instrument be not paid at maturity".

c) The same section also provides"(5) States that such instrument is secured by a deed of trust referred to therein."d) It also provides "(3) Waives the benefit of any law intended for the advantage or protection of the obligor".

e) V§6-358 reads in part, "The validity and negotiable character of an instrument are not affected by the fact that: (l) It is not dated."

f) Or "(3) Does not specify the place where it is drawn or the place where it is payable.

Q. 7 on p. 521. The answer would be the same under the U.C.C.

(a) U.C.C.§3-109(1)(c) expressly provides that an instrument is payable at a definite time if it is payable at a definite time subject to any acceleration.

(b) U.C.C.§3-112(1)(b) reads, "The negotiability of an instrument is not affected by a statement that collateral has been given for the instrument or in case of default on the instrument the collateral may be sold."

(c) U.C.C.§3-105(1)(e) reads, "A promise or order otherwise unconditional is not made conditional by the fact that the instrument states that it is secured whether by mortgage or otherwise."

(d) U.C.C. §3-112(1)(e) reads, "The negotiability of an instrument is not affected by a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor."

(e) Under U.C.C. §3-109(1)(a) the instrument is payable at a definite time because it is payable on Nov. 6, 1961. Hence it is immaterial that the instrument is not dated.

(f) U.C.C. §3-112(1)(a) reads in part, "The negotiability of an instrument is not affected by the omission of a statement of the place where the instrument is drawn or payable."
8. Farmville Bank made demand on Innocent for payment of the following instrument:

\[ \text{Oct. 25, 1960 Farmville, Virginia} \]

On demand, I promise to pay to bearer at Farmville Bank, $100.00

The endorsers hereof waive protest, presentment and notice of dishonor.

\[ \text{Nat Innocent} \]

The signature of Innocent on the instrument appears to be genuine, but in reality is a clever forgery. On the back of it appear the signatures of Frauder and Innocent. Innocent seeks your advice as to his liability to Farmville Bank, and he tells you that Frauder brought the note to him when the space for the maker's signature was blank and requested Innocent to become maker. Innocent declined to sign as maker, but agreed to sign as accommodation endorser after the signature of Frauder, if Frauder would become maker of the note. Frauder and Innocent endorsed the note, but instead of signing it as maker, Frauder forged Innocent's signature as maker and sold the note to Farmville Bank. Admitting that Farmville Bank is a holder in due course of the note, Innocent seeks your advice as to his liability to the Bank as maker, and (b) as endorser.

\text{(NEGOTIABLE INSTRUMENTS): (a) Innocent is not liable as a maker for his signature was a forgery and he is not estopped to assert it. \#6-375. (b) Innocent is liable as an indorser because every indorser impliedly warrants that the instrument is genuine and in all respects what it purports to be. \#6-417 and 6-418.}

Q. 8 on p. 521. (a) Under the U.C.C., Innocent would be liable as maker under the provisions of U.C.C. \#3-115 dealing with incomplete instruments and 3-407 dealing with alteration. In so far as applicable they read as follows: "When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect (and) if the completion is unauthorized even though the paper was not delivered by the maker or drawer a subsequent holder in due course may enforce the instrument as completed" i.e. as against the party who signed the incomplete instrument. The risk of improper completion should be on the person who signed the incomplete instrument. (b) Innocent is liable on his contract of indorsement, either as a general indorser, if holder in due course knew nothing of the accommodation character of his indorsement, or as an accommodation party in the capacity in which he signed if Bank did have such notice. Since Innocent never transferred the note for a consideration he is not liable for any breach of warranty. Note that under the N.I.L. "every indorser" makes warranties, while under the U.C.C. only those persons who are transferees for a consideration make warranties. See U.C.C. \#3-111; 3-115; 3-117.

8. Madison handed Newman the following instrument on June 1, 1961:

\[ \text{This May 31, 1961.} \]

D. Davis.

"One month after date I promise to pay to Bearer Three Thousand Dollars."

It appeared regular on its face, and Davis was a man of substantial means. Madison said to Newman: "If you can sell this for me, I will give you all over $2,500 you get for it." Newman took the paper to Trader and said: "Here is something good; I need some cash so you may have it for $2,750 if you take it at once." Trader said, "Dave, here is your money," and paid Newman $2,750 in cash. Newman delivered him the note without indorsement and paid Madison $2,500. At maturity it was discovered that although Newman did not know it, the note was a forgery, and Trader demanded payment from Newman, telling him that Davis had refused payment because of the forgery. What, if any, is the liability of Newman to Trader?

\text{(NEGOTIABLE INSTRUMENTS): Since Newman did not disclose his agency he is as liable as if he had been acting for himself. Under the Uniform Negotiable Instrument law (section 65) one who negotiates by delivery only warrants that the instrument is genuine and in all respects what it purports to be. Since Trader was Newman's immediate transferee the warranty ran to him and Trader is entitled to $3,000—what he would have gotten if there had been no breach of warranty.}

Q. 8 on p. 536. Under U.C.C. \#3-417(2)(b) "Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that all signatures are genuine or authorized." Hence the answer is the same under the U.C.C. for the same reason.
9. Thomas Jenkins negotiated with Plaintiff to purchase Plaintiff's stock of merchandise and offered to give Plaintiff a note for the same after the value thereof had been determined by inventory. Plaintiff would not agree to take the note unless Defendant signed the same as co-maker. Jenkins and Plaintiff approached Defendant and exhibited to him the following note:

"Richmond, Virginia
November 12, 1959

"Twelve months after date I promise to pay to the order of Plaintiff $____ for value received.

Thomas Jenkins"

Defendant asked Plaintiff what the value of the stock of goods would approximate, and Plaintiff replied that he did not expect it to exceed $350.00. With that assurance, Defendant signed the note in the blank space after Jenkins' signature. After the inventory, Jenkins filled up the note by inserting the figure "$325.00" and handed it to Plaintiff, but Plaintiff gave it back saying he must have interest. Whereupon, Jenkins inserted the words "with interest from date at 6%" and transferred it to Plaintiff. The note contained no blank for interest.

On the due date, Plaintiff made demand on Defendant for $325.00 plus interest from the date of the note, but Defendant declined to pay the same and asserted as his defense(a)that the insertion of "$325.00" in the note after he had signed the same relieved him of any obligation and (b)that the addition of the words "with interest from date at 6%" relieved him of any obligation on the note. Do the reasons for not paying the note asserted by Defendant in (a) and (b), or either of them constitute legal defenses?

(NEGOTIABLE INSTRUMENTS)(a) The reason stated here does not constitute a defense as the blank was filled in in strict accordance with the authority given.(b)The reason stated here does constitute a defense as nothing was agreed to about interest (which does not start to run on time paper until after maturity unless agreed otherwise) and the insertion of that provision constituted a material alteration which discharged all parties on the instrument who did not consent thereto. 140 Ky. 349, 140 S.W. 17

Q.9 on p.522. The answer to (a) would be the same under the U.C.C. but the answer to (b) would be different unless the alteration was fraudulently made. U.C.C. #3-407 (2) reads as follows: As against any person other than a subsequent holder in due course (a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense; (b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

While the alteration was material it is not fraudulent. It was made openly under a claim of right. The parties thought they were putting in something that was left out. Hence plaintiff may hold defendant for $325 with no interest --i.e. defendant is not discharged, but liable as per the original tenor of the authorized instrument.
7. Abner, in payment of a debt, gave Brown a check for Two Thousand Dollars drawn on Exchange Bank. Brown endorsed the check to Carson for value and two days later Carson presented this check for payment at Exchange Bank and was told by the Cashier that Abner had stopped payment on the check the preceding day, and although Abner's account was ample to cover the check, the Bank must decline to pay it. Carson at once informed Brown of what had taken place and demanded payment from him, which was refused. All the parties are residents of Richmond. What, if any, are Carson's rights against, (1) Abner, (2) Brown, and (3) Exchange Bank?

(Negotiable Instruments) (1) Carson, as a holder in due course, may recover from the drawer, Abner. Since Abner stopped payment he had no right to expect the check to be honored and need not be given notice of dishonor. (2) Carson could, if he wished, proceed against Brown who has promised to pay in event of dishonor. Since it was presented promptly and notice of dishonor given promptly, Brown is liable on his contract of indorsement. (3) Since a check is not (without more) an assignment Carson has no rights against the Exchange Bank.

Q. 7 on p. 538. Same answer under the U.C.C. for the same reasons. (1) U.C.C. #3-511 (2) (b) reads in part: "Presentment or notice is entirely excused when such party has countermanded payment." (2) Note: A reasonable time for presentment in the case of an ordinary check is presumed to be within 30 days after date or issue whichever is later in the case of a drawer, and seven days after indorsement in case of an indorser. U.C.C. #3-503 (2). And by U.C.C. #3-508 (2) any necessary notice of dishonor must have been given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor. (3) U.C.C. #3-409 (1) reads: A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawer is not liable on the instrument until he accepts it.

9. Exploration Corporation discounted at Merchants Bank, Danville, Va., the following instrument:

"Norfolk, Va., Apr. 3, 1961

Two months after date we promise to pay to the order of James White Four Thousand Dollars at Blue Ridge Bank, Salem, Va.

Exploration Corporation
By W. F. Green, President"

"James White, Salem, Va.
Thomas Brown, Roanoke, Va."

Indorsed on the back:

The foregoing is the entire instrument.

In May, 1961, Exploration Corporation became insolvent and White moved out of the State. Merchants Bank knew these facts, and, therefore, without more, wrote Brown it would look to him for payment of the note. Brown refused payment, and Merchants Bank sued him. Has he any defense on the above facts? (Negotiable Instruments) Yes. Brown was entitled to due presentment at maturity and prompt notice of dishonor if the instrument was not paid when properly presented. Presentment is not excused merely because the Maker is insolvent.

Q. 9 on p. 539. The answer is the same under U.C.C. #3-501 and 3-511 unless the maker is in insolvency proceedings instituted after the issue of the instrument in which case presentment is entirely excused but notice of dishonor must still be given.

Q. 9 on p. 554 (Negotiable Instruments) (1) Under U.C.C. #4-201 the First and Farmers Bank was an agent to collect regardless of the form of indorsement and regardless of whether Crooked had the right to withdraw or has withdrawn the money unless there was clearly a contrary intent. But under U.C.C. #4-209 and 3-303 Bank gave value when it permitted Crooked to draw out the proceeds and (if the other requisites of being a holder in due course are present) has become a holder in due course even if the item was restrictively indorsed. (2) The answer is the same under the U.C.C. for the same reason.
8. On June 1, 1956 Peter Porter sued David Dirk and Donald Dirk to recover a balance of $1,000 due on the following instrument: "Feb. 1, 1955. One year after date we promise to pay to the Order of Peter Porter $2,000. (Signed) David Dirk, Pres. (Signed) Donald Dirk, Sec. & Treas." The note was not paid at maturity, and Porter instituted an action against David Dirk and Donald Dirk thereon. They filed an appropriate pleading, denying liability. At the trial the plaintiff introduced the note in evidence and rested. Thereupon, the defendants offered evidence to show that at the time the note was signed and delivered, it was the intention of the parties that only Mack Realty Corporation was to be bound, that Mack Realty Corporation had authorized the execution of the note by its President and Secretary, and had secured its payment by a deed of trust on real estate owned by the Corporation. (a) Is this evidence admissible? (b) If Peter Porter had sued Mack Realty Company on the note, would it have been liable?

(NEGOTIABLE INSTRUMENTS) (a) No. This is an action on the note and not on the underlying obligation evidenced by the note. Section 20 of the N. I. L. reads in part: "but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability." Note: It is arguable that since this is an action between the original parties the true situation can be shown and that we would then have more than the mere addition of words. (b) No, if he sued on the note. Section 18 of the N. I. L. reads in part, "No person is liable on the instrument whose signature does not appear thereon." The doctrine of undisclosed principal is not applicable to a suit on a negotiable note.

Q. 8 on p. 553 (Negotiable Instruments) (a) Under U.C.C. §3-403 (b) parol evidence is admissible in an action involving only the original parties to show that it is the corporation's obligation and not that of an agent who was authorized to sign for the corporation and who indicated that he was signing in a representative capacity although the representative did not disclose his principal. See Comment 3 to U.C.C. §3-403. (b) The Corporation is not liable on the note. U.C.C. §3-401 (1) read, "No person is liable on an instrument unless his signature appears thereon." However, if the Corporation received the consideration, it would be liable on quasi-contractual principles to the holder of the note. The parties who signed are personally liable to those to whom the note is negotiated, since they did not disclose their principal, but if an agent pays a debt which his principal should have paid, the agent is entitled to reimbursement.

9. Trusting, a resident of Caroline County, Virginia, purchased a 1959 Sussex automobile from Crooked, giving him in payment therefor a check for $2,000 drawn on the State Trust Company of Bowling Green. Crooked endorsed the check, deposited it to his account at the First & Farmers Bank of Richmond, immediately drew out the proceeds and sailed for Australia.

Two days later Trusting learned that the automobile which he had purchased from Crooked had been stolen from a used car dealer in Ladysmith, and he immediately stopped payment on the check at the State Trust Company.

The First & Farmers Bank, knowing nothing of this fraudulent transaction, presented the check for payment at the State Trust Company and found that payment had been stopped, and it now consults you and asks: (1) Whether it is a holder in due course of the check or merely Crooked's agent for its collection? (2) Would an action against Trusting for payment of the $2,000 be successful?

(NEGOTIABLE INSTRUMENTS) (1) The Bank was a holder in due course since the check was presumably endorsed non-restrictively, i.e., in blank or specially to Bank, and Bank has taken it in good faith and given value by honoring Crooked's request for the proceeds. (2) Yes. A stop payment order is no defense as against a holder in due course. Trusting, having stopped payment, could not reasonably expect that the drawee bank would honor the check and hence is not entitled to presentment and notice of dishonor.
8. Phil Morris drew his check upon the Farmers Bank of Richmond payable to Graham C. Jennings in payment of the purchase price of a residence in Henrico County. Jennings then presented the check to the bank for payment, but due to a bookkeeping error on the part of the bank the check was returned marked "insufficient funds." Upon receiving back the check from the bank, Jennings called a number of Morris' business creditors, and informed them that Morris had given him a bad check. As a result, two of these creditors refused Morris further credit in his filling station business. Morris now brings an action against the bank for refusing to pay the check. Jennings also sues the bank, alleging that because of the bank's refusal to pay the check he was unable to close a business transaction and thus sustained substantial losses. What is the liability of the bank (a) to Morris and (b) to Jennings?

(Negotiable Instruments) (a) The bank is liable to Morris for any damages caused him by its failure to honor his check as the bank broke its contract with him to honor his checks if he had sufficient funds. By §6-71 Morris may recover his actual provable damages. (b) The bank is not liable to Jennings. §6-543 reads, "A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check."

9. Sam Jones drew a check on the Chemical Corn Bank of Crewe, Va., payable to the order of Charles Brown, and delivered the check to Brown for valuable consideration. Thereafter, Brown endorsed the check in blank and delivered it to William Smith in payment of the purchase price of a Chesapeake Bay retriever. Smith, becoming fearful as to the value of the check, took it to the Chemical Corn Bank of Crewe and had it certified by the cashier. Later it was discovered that Jones did not have sufficient funds on deposit and that the bank had erroneously certified the check. The bank now refuses to pay the check and Smith brings actions against Jones as drawer and Brown as endorser. How should the court find as to (a) the liability of Jones, and (b) the liability of Brown?

(Negotiable Instruments) (a) and (b). Neither is liable. When the bank certified the check the request of the holder the drawer and endorser were discharged. It is the same as if the bank had cashed the check, and then the holder had purchased the bank's obligation as, for example, a cashier's check. §6-542 reads, "When the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon."

Q8 and Q9 on p.568 (Negotiable Instruments) would be answered the same way under the U.C.C. for the same reasons as the U.C.C. provisions are substantially the same as the N.I.L. provisions.

d. Braxton, for a full and valuable consideration, executed and delivered to Peter a negotiable note in the amount of $10,000. Peter sold the note to Tommy, transferring title thereto by his endorsement. Braxton did not pay the note upon its maturity date, whereupon, Tommy called upon Peter for payment. Peter promptly paid $3,000 to Tommy and at the time advised him that he was without funds to pay the balance. Shortly thereafter Tommy sued Braxton for $10,000, the full amount of the note. Braxton, defending the action, admitted that he owed $7,000, with the interest from date, but he denied that Tommy was entitled to recover the full $10,000 because of the payment of $3,000 made to him by Peter. Is Tommy entitled to recover $10,000?

(Negotiable Instruments) Yes. Braxton is not entitled to the note as against Peter until he pays the entire amount. Moreover if Tommy recovers judgment on the note for only $7,000, the obligation on the $10,000 note would be destroyed by merger with a $7,000 judgment to the detriment of Peter. Of course Tommy holds anything he may collect in excess of $7,000 in trust for Peter.

Q8 on p.583 (Negotiable Instruments) The question asked is not covered by the N.I.L. or the U.C.C. There is no reason to believe that the adoption of the U.C.C. changes the law as stated in the answer.
9. Billingsley executed his negotiable promissory note to the order of Rolfe, the note being payable at the Peoples and Mechanics Bank thirty days after date. The note contained a provision waiving presentment and notice of dishonor. Rolfe, before maturity and for value, negotiated this note by endorsing it to the order of the Peoples and Mechanics Bank, that bank being the holder of the note on its maturity date, and Billingsley had sufficient funds on deposit in a checking account in that bank with which to pay the note. Thirty days after its due date the Peoples and Mechanics Bank advised Rolfe that the note had not been paid at maturity, and called upon him to pay the principal of the note, with interest from its due date until paid. Rolfe refused to pay the note and the bank sued both Billingsley and Rolfe to recover the principal of the note and interest from its due date until paid.

(1) May the bank recover the principal of the note from:
(a) Billingsley (b) Rolfe.

(2) May the bank recover interest on the note from its due date until paid from:
(a) Billingsley (b) Rolfe.

(NEGOTIABLE INSTRUMENTS) There can be no recovery from the indorser, Rolfe, of either principal or interest. By section 70 of the N.I.L. if the instrument is payable at a special place, and the maker is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. A tender stops the running of interest as to both Rolfe and Billingsley, and entirely discharges parties secondarily liable such as Rolfe. It does not, however, discharge Billingsley's liability for the principal amount due.

Q. 9 on p. 583 (Negotiable Instruments) Virginia has adopted its own version of U.C.C. § 3-121 which differs from the alternatives allowed by the U.C.C. The Virginia version reads, "A note or acceptance which states that it is payable at a bank is not of itself an order to the bank to pay it, but the bank may consider it as an authorization to pay." And the Virginia version of U.C.C. § 3-604(3) reads in part, "provided, however, in the case of an instrument which states that it is payable at a bank the maker or acceptor shall not be considered able and ready to pay unless he has specifically ordered the bank to pay the instrument out of funds on deposit with or otherwise provided to the bank for such payment." (b) Hence there has been no tender. It follows that the maker, Billingsley, owes both principal and interest. Rolfe, however, was discharged. If a creditor (the bank) has in its control security given it by the debtor (Billingsley's bank account which the bank could consider as authorization to apply to the payment of the note when it became due) the surety (indorser, Rolfe) will be discharged to the extent the creditor gives up his security. Bank is under a disability to recover from the indorser any loss which in the exercise of due diligence the bank could have avoided.
8. In 1962, Boswell, Sr., made a loan to his son, Boswell, Jr., in the amount of $10,000, with which funds Boswell, Jr., purchased a farm. Boswell, Jr., executed his negotiable promissory note in that amount dated February 1, 1962, payable to the order of Boswell, Sr., on February 1, 1964. This note was secured by a deed of trust on the farm, which deed of trust was duly recorded in the proper clerk's office. Early in 1963, Boswell, Sr., advised his son that it was unlikely that he, Boswell, Sr., would live long enough to receive payment of the note, and that he had decided to make provision for canceling it. Without telling his son what procedure he intended to follow and without surrendering the note, Boswell, Sr., wrote on the blue cover of the deed of trust the following: "At my death, the note secured by this deed of trust is canceled and not to be collected. (s) John Boswell, Sr."

Boswell, Sr., died on June 7, 1963, with the note still in his possession. The administrator of his estate advised Boswell, Jr., of the writing on the deed of trust blue cover, but refused to deliver the note to Boswell, Jr.

Boswell, Jr., consulted you and asked you (1) whether the postponement of the cancellation of the note until Boswell, Sr.'s death affected the validity of the cancellation, and (2) whether the fact that the recital of cancellation was made only on the deed of trust blue cover affected the validity of the cancellation.

How should you advise Boswell, Jr., with respect to questions (1) and (2)? (NEGOTIABLE INSTRUMENTS) (1) No, it did not. The matter of renunciation of rights on a negotiable instrument is expressly governed by section 122 of the U.C.C. (V/6-475), and thus this controls rather than general principles of the law of wills. (2) Since the renunciation was in writing and the rights of no holder in due course are involved, the renunciation is effective even though not on the note. See 195 Va.92.

Note: Section 3-605 of the U.C.C. requires a written renunciation that has been signed and delivered, or that the instrument be surrendered to the party to be discharged. Hence there would not have been a valid renunciation if the U.C.C. had been in force.

9. Crooks was manager of the fire insurance department of General Insurance Co., a large and old company which had operated successfully for many years under an elaborate internal control system designed to prevent the fraud of its employees. Crooks prepared a fictitious fire insurance claim against the company, in the name of Sam Able, a fictitious person. Upon presentation of this claim to the company, its treasurer caused it to be put through the control system but the fraud was not detected, and the treasurer, believing the claim to be bona fide, issued the company's check to the order of Sam Able. Crooks, in a disguised hand, endorsed the name of Able to the check and presented it for payment to National Bank, on whom it was drawn. National Bank paid the check and charged it to the account of General Ins. Co. Crooks immediately disappeared from the country.

Upon discovering the fraud two weeks later, General Insurance Co. consulted you and asked you whether it is entitled to recover from National Bank the amount of the check. How should you advise General Insurance Co.? (NEGOTIABLE INSTRUMENTS) The loss is on the Insurance Company since under Virginia's amendment to the N.I.L. (V/6-361) the check was payable to bearer. This portion of our law reads, "The instrument is payable to bearer: (3) When it is payable to the order of a fictitious or nonexisting or living person not intended to have any interest in it, and such fact was known to the person making it so payable, (or known to his employee or other agent who supplied the name of such payee). The part in parenthesis was added in 1956.

Note: The same result is reached in a different way under the U.C.C. The check is order paper, but an indorsement by any person in the name of a named payee is effective for negotiation an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no interest therein. U.C.C. 3-405.
8. James Smith, a high school student, aged twenty, sold Dealer an automobile which he owned, taking as part of the purchase price Dealer's negotiable note for $500 payable six months after date to Smith. Next day Smith endorsed this note to Finance Corporation. Dealer failed to pay the note at maturity, claiming that the car did not fulfill the warranty made by Smith at the time of the sale. Finance Corporation paid full value for the note and knew nothing of the transaction out of which it arose, and believed Smith was twenty-one years old.

Finance Corporation, one year after the maturity of the note sued Smith and Dealer on it. Smith pleaded infancy, and Dealer pleaded breach of warranty and that Smith, being an infant, could not pass title to the note.

How ought the Court rule on each plea, assuming that there was a breach of warranty?

(NEGOTIABLE INSTRUMENTS) Smith's plea of infancy is good. Infancy is a real defense good even against a holder in due course. Since Finance Corporation is a holder in due course it took free from the defense of the breach of warranty. Even though Smith was an infant, he had the power to pass the title to the note notwithstanding the fact that he is not liable on his indorsement. Smith's infancy is a personal defense and hence not available to Dealer. See V/C-374 Note: The U.C.C. does not change the law on these points.

9. Wilson, intending to purchase some stock from Zerab but, not being certain of the spelling of his name or of his initials signed the following instrument:

"Thirty days after date I promise to pay or order, Two Thousand Dollars.

"October 15, 1963

"H.R. Wilson"

This paper was left on Wilson's desk. A clerk saw it, filled in his own name as payee and negotiated it to Farmers Bank for value. The clerk then left for parts unknown. Is Wilson liable to Farmers Bank on the note?

(NEGOTIABLE INSTRUMENTS) Assuming that Wilson's leaving it on his own desk is not negligence, Wilson is not liable. V#6-367 reads, "When an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery." Note: The rule is the reverse under U.C.C.3-407(3).

7. Retailer of Roanoke, Va., executed the following instrument:

"Twenty days after sight pay to Dealer or order Two Thousand Dollars, value received.

"Roanoke, Virginia, May 2, 1961

"Retailer

"To J. Scott

Exchange Building, Baltimore, Md."

Retailer mailed this instrument to Scott, who endorsed on its face, "Accepted, May 3, 1961, J. Scott," and on the next day returned it to Retailer, who at once delivered it to Dealer in payment of a debt. Dealer then sold and endorsed the instrument to Financier of Norfolk, Va., who for value endorsed it to State Bank, May 10th, and on the 23rd it was presented in regular course of business to J. Scott, who said, "I won't pay this because Retailer owes me money; just send it back." The presenting agent, without doing anything else about the instrument, the next day called State Bank on the telephone and told it what had happened and sent the instrument back at once to State Bank.

That institution now seeks your advice as to its rights against (a) Retailer, (b) J. Scott, (c) Dealer, and (d) Financier. What ought you advise it?

(NEGOTIABLE INSTRUMENTS) Everyone is discharged except the acceptor, J. Scott, who by his acceptance is primarily liable thereon to any holder in due course. Since the bill of exchange was drawn in Virginia, and payable in Maryland it is a foreign bill of exchange. If such a bill is dishonored a formal protest is required to hold the drawer and indorsers. There was no formal protest, nor any waiver thereof. Protest must be made on the day of dishonor unless delay is excused or the bill has been duly noted. See W#6-505 and 6-508. Note: Under the U.C.C. the states are not foreign to each other, so this would be an inland or domestic bill rather than a foreign one
7. Over a period of years Spend Thrift had borrowed various sums of money from his spinster aunt, Elvira. At the beginning of each year he would give her a note payable at the end of that year for the amount due, at which time he would take up the existing note and pay her the interest on the balance. This procedure continued until Spend Thrift’s death in November of 1963. Timothy Trifle, after his appointment as administrator of the estate of Spend Thrift, received a claim from Elvira in the form of a negotiable note in the sum of $1,500 dated the preceding January, executed by Spend Thrift and payable to Elvira. Trifle noticed an erasure in the note, and was informed that Elvira had altered this date of payment from ten years to one year. She stated that this was done after Spend Thrift’s death because one year was the original agreement and she did not notice the mistake until afterwards. On this point she had corroborating evidence. Elvira instituted an action on the note and the above facts were proven. May Elvira recover on the note? (NEGOTIABLE INSTRUMENTS) Under the N.I.L. (Section 12h) any material alteration avoids the instrument except as against a party who has himself made, or assented to the alteration and subsequent indorsers. Unless Elvira successfully first secures reformation she cannot sue on the note. However, since she did not act fraudulently she can recover on the underlying obligation. See 176 Va. 255.

Under U.C.C. 3-407 a non-fraudulent material alteration does not avoid the instrument and it may be enforced as per its original tenor.

8. If the Consumer, in payment of a past-due grocery bill, executed a negotiable note in usual form in the sum of $500 payable to Ace Grocer, thirty (30) days after date. Grocer was unable to pay his obligations, and forty-five (45) days after the date he received Consumer’s note he endorsed and delivered this note to Ernest Wholesaler for value. Wholesaler instituted an action against Consumer on the note to collect the $500. Between the date of the note and its transfer to Wholesaler, Consumer had recovered a $200 judgment against Grocer as the result of a minor automobile collision. Upon the trial of the action instituted by Wholesaler, Consumer sought to set off his uncollected judgment against Grocer. Over objection, may he do so? (NEGOTIABLE INSTRUMENTS) (Same answer under either N.I.L. or U.C.C. and for same reasons). No, he may not do so. While it is true that one who takes after maturity is not a holder in due course and hence takes subject to defenses, a distinction is drawn by the better reasoned cases between a set-off which arises from an entirely independent transaction, and a defense which arises in connection with the note. The set-off stands on its own two feet and can be used only against Grocer unless a statute expressly provides otherwise. Va Code 8-94 which does provide otherwise expressly applies only .... to .... assignees of non-negotiable instruments. See 163 Va. 417 for exhaustive analysis.

9. Joel Kemper, an insurance agent, solicited an application for a $10,000 life insurance policy from Dr. Elbert Payne, and received from Payne a negotiable note in proper form, payable sixty (60) days after date to Kemper for the $600 premium. This note was to be held by Kemper pending Payne’s physical examination, and subsequent issuance of the policy by the insurance company, and if the policy was not issued, the note was to be returned to Payne. The insurance company refused to issue a policy to Payne. However, Kemper, in violation of the agreement, discounted the note for full value at Citizen’s Bank before maturity, without notifying the Bank of the condition, and pocketed the money.

Dr. Payne now asks your advice as to his liability to the Bank for the note.

How ought you advise? (NEGOTIABLE INSTRUMENTS) Dr. Payne is liable since Bank is a holder in due course. It takes free of equities of ownership and transfers in breach of trust both under the N.I.L. (Section 57) and U.C.C. 3-305.

This Section contains some questions which involve the law of negotiable instruments. In answering each of these questions you must state whether your answer is based on the negotiable instruments law (N.I.L.) presently in effect in Virginia, or on the uniform commercial code (U.C.C.) which will become effective January 1, 1966. A correct answer on either basis will receive full credit.

4 June 1964.
4. Glaser gave his negotiable promissory note to Smith in payment of the purchase price of an acre of real estate in Florida which Smith represented as fronting on Main Street in Miami. In fact, the land was under six feet of water in a nearby swamp. Thereafter, Smith indorsed the note for value to the order of Crain who had no knowledge of Smith's deceit. Crain then indorsed the note for value to Iverson who, prior thereto, had learned of the transaction between Glaser and Smith, and of the deceit of Smith. On the due date of the note, Iverson made demand upon Glaser for payment which Glaser refused. Glase now seeks your advice on whether he is obligated to pay the note to Iverson. What should your advice be? (NEGOTIABLE INSTRUMENTS) Yes, he is, under both the U.C.C. (U.C.C.3-201) and (N.I.L. §58). Since Iverson traces his title through a holder in due course and was not a party to the fraud, or as a prior holder subject to any defense, he has all the rights of Crain. Since Glaser owed Crain there is no extra burden placed on Glaser. Any other rule might seriously limit a holder in due course's right to negotiate the instrument further. This is frequently called the "shelter" or "umbrella" doctrine.

5. John Pride had served for many years as the bookkeeper for Ben Rote, a restaurant owner of Norfolk, and had been the employee charged with the making of deposits in and withdrawals from the Providence Bank with which Rote conducted his banking affairs. On Dec. 3, 1961, Pride went to the showroom of Foreign Autos, Inc., and was shown a new Mercedes-Benz which was for sale for $5650. Pride told the salesman that he would purchase the automobile and would be in on the following day to close the deal. Early the next morning, Pride drew a check on the Providence Bank for $5650 payable to Foreign Autos, Inc., and carefully and cleverly forged Rote's name to the check as drawer. Pride then went to the bank, and told its Cashier that Rote had asked that the check be certified so that it could be accepted without question by Foreign Autos, Inc., in payment for the Mercedes-Benz which Pride stated was being purchased by Rote. The Cashier, having had many prior dealings with Pride and trusting him implicitly, certified the check. Pride then went to Foreign Autos, Inc., and delivered the check. When asked by the salesman why the check had been drawn by Rote, Pride replied that it represented an agreed credit to be applied against a larger sum owed. Pride by Rote. Pride was then delivered the Mercedes-Benz with an accompanying title certificate duly executed. Pride promptly drove away to parts unknown. Rote soon learned of Pride's misconduct and directed Providence Bank not to pay the check.

(a) Assuming that Providence Bank had not paid the $5650 to Foreign Autos, Inc., at the time of Rote's instructions as to non-payment, is it obligated to do so on presentment of the check?

(b) Assuming that Providence Bank had paid the $5650 to Foreign Autos, Inc., prior to the time of Rote's instructions as to non-payment, is it entitled to recover such sum from Foreign Autos, Inc.? (NEGOTIABLE INSTRUMENTS) (a) Yes, under both the U.C.C.3-413(1) and the N.I.L.4. Certification of a check is equivalent to an acceptance and the acceptor is primarily liable and engages to pay it according to the tenor of his acceptance. Under Price v. Neal the acceptor admits the genuineness of the drawer's signature. (b) If the bank is under a duty to pay it, a fortiori it cannot recover back what it was legally bound to pay.
7. Sampson executed and delivered to Rowland the following instrument:

"Roanoke, Va., May 30, 1965

"Five days after date I promise to pay to John Rowland, or order, Five Thousand Dollars. The holder of this instrument shall have the election to require the assignment and delivery to him of my 100 shares of Blue Ridge Chemical Corporation stock in lieu of the payment of Five Thousand Dollars, in money.

"/s/ Virgil Sampson"

On June 1, 1965, Rowland signed his name on the back of that instrument and delivered it to Jonathan Greely. Ten days thereafter Jonathan Greely demanded that Virgil Sampson assign and deliver to him the 100 shares of Blue Ridge Chemical Corporation stock provided for in that instrument. Upon Sampson's refusal to deliver the stock, Greely sued Sampson to recover the stock, or, in lieu thereof, $5,000, the face amount of the instrument. Sampson defended on the ground that the instrument was executed and delivered to Rowland for goods purchased by Sampson from Rowland, and that because of a breach of an express warranty he was not obligated to perform according to the terms of the instrument.

Assuming that there was a breach of an express warranty, may this defense be successfully asserted by Sampson?

NEGOTIABLE INSTRUMENTS) N.I.L. Answer: No. Since the option to take something other than money is in the holder, and he can get money if he wishes, the instrument is negotiable and Sampson, as a holder in due course, takes free from the defense of breach of an express warranty. See N.I.L. 5(h).

U.C.C. Answer: Yes. The U.C.C. omits section 5(h) of the N.I.L. and as a result the power given the holder to demand stock destroys negotiability and Greely took the instrument subject to defenses. See U.C.C. § 3-104(1)(b) and 3-112 and comments thereunto. The note gives holder a power to demand something other than the payment of money.

8. Grizzly Bear was an employee of Black Forest Corporation. As a bookkeeper, Bear had authority to issue and sign checks on behalf of his employer. During the time Bear was working for the Corporation he became hard pressed for money and he drew a check on the Corporation's depository Oak Wood National Bank, payable to Honey Bee, in the amount of $2,000, and signed the check on behalf of the Corporation as drawer. Bear knew that there was no such person as Honey Bee and that the payee was fictitious. Shortly thereafter Bear indorsed the name of Honey Bee on the back of the check, then indorsed his own name on the back thereof and deposited the check to his personal account in the Oak Wood National Bank. Bear promptly thereafter withdrew the $2,000 from his checking account and used it for his own purposes.

After Bear withdrew the funds his employer learned of the fraud practiced upon it by Bear and demanded that the Oak Wood National Bank make payment to it of $2,000, the amount of the check charged to its account by the Bank. Upon refusal of the Bank to pay, the Corporation commenced an action against Oak Wood National Bank to recover the amount of the loss. May the Corporation recover?

NEGOTIABLE INSTRUMENTS) N.I.L. Answer: Under Section 9(3) of the N.I.L. the check was payable to bearer as the payee was fictitious and the person making the check so payable knew that fact. Since Bear was authorized to write checks, and the bank paid bearer of bearer paper the Corporation cannot recover.

U.C.C. Answer: U.C.C. § 3-405(1)(b) reads, "An indorsement by any person in the name of a named payee is effective if a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument." Hence Bear's indorsement of the name "Honey Bee" was effective, Bank's payment to Bear proper, and thus the Corporation has no right against Bank.
Alfred executed a promissory note to Bruce Baker as follows:

July 1, 1962

I promise to pay to the order of Bruce Baker the sum of Ten Thousand Dollars (10,000) at the rate of four per cent (4%) interest per annum payable on July 1, 1967. This note is given as the result of a contract, dated June 15, 1962, between the parties herefor to the sale of a herd of 100 Black Angus steers in good condition. This note is secured by a deed of trust, dated July 1, 1962, on Alfred Farm and is subject to the terms of the said deed of trust. In the event of default, the holder is entitled to recover the costs of collection, including twenty-five per cent (25%) attorney's fees.

(Signed) Alfred

Bruce Baker for value endorsed and delivered the note to Cal Kramer on October 3, 1965, although Baker knew that Alfred was claiming that he had been defrauded by the sale. Alfred refused to pay the note on the due date, and Kramer retained an attorney and brought an action at law thereon. Alfred introduced uncontradicted evidence that he had, in fact, been defrauded and contended that Kramer, although a bona fide purchaser, was not entitled to recover on the note as a holder in due course because:

(a) The note did not designate the place of payment.
(b) The note specifically referred to the sales contract as being the basis for the note and the reason for its execution.
(c) The note stated that it was secured by a deed of trust.
(d) The note stated that it was subject to the terms of the deed of trust.
(e) The note provided for attorney's fees and the amount thereof was exorbitant.

How should the court rule on each contention?

(NEGOTIABLE INSTRUMENTS) Provisions a, b, c, and e do not effect the negotiability of the note since a negotiable instrument (a) need not state the place of payment, (b) may contain a statement of the transaction that gives rise to the instrument, (c) state that is secured by deed of trust, and (e) state that it is payable with attorney's fees. However (d) which makes the instrument subject to the terms of the deed of trust destroys its negotiability. One should not have to consult some other instrument in order to determine whether a note is negotiable. It would frequently be highly inconvenient to do so.

On June 15, 1960, Robert Johnson, for consideration, executed a negotiable note proper in form for $10,000 payable to John Riley on or before June 15, 1965. Johnson suffered financial reverses, and in January of 1965, Riley on two occasions told Johnson that he knew that Johnson was having a hard time and that he, Riley, didn't need the money and the debt should be considered as completely cancelled with no other act or payment being required of Riley. These conversations were witnessed by three persons, including Lambert. On March 15, 1965, Riley changed his mind and endorsed the note for value to Lambert. The note was not paid by June 15, 1965, and Lambert sued Johnson for the amount of the note.

Johnson defended on the ground that Riley had cancelled the debt and renounced all rights against Johnson and that Lambert had notice of this fact.

Is Lambert entitled to recover from Johnson?

(NEGOTIABLE INSTRUMENTS) Yes. The renunciation to be effective under the U.C.C. must be in a signed writing delivered to the party who would otherwise be liable, or the instrument must be given to such party. See §8.3-605.
Hardup bought a radio from Dealer for $150 and gave him a check therefor drawn on X Bank. Mrs. Hardup decided they ought to have a color television as well, so Hardup gave Dealer another check for $750, also drawn on X Bank, and Dealer delivered both the radio and the T.V. to Hardup’s home. On his way to lunch that day, Dealer took both of these checks to X Bank, and said to the receiving teller: “Give me cash on the $150 item and place the other to my credit.” Accordingly, the $150 was paid over the counter to Dealer and he was given a deposit receipt for the $750. Later that afternoon the Bank, while posting the day’s business and before posting the $750 to Dealer’s credit, found that another teller had cashed a check on Hardup’s account which completely extinguished that account, and thereupon the Bank immediately sent both the $150 and the $750 checks by a messenger to Dealer and demanded the return of the money and deposit receipt. Dealer refused to surrender either and now consults you as to his right to keep the $150 and hold the Bank for the $750. How ought you to advise?

(NEGOTIABLE INSTRUMENTS) Under UCC and Va.Code §8.4-213(1)(a) an item is finally paid by a payor bank when the bank pays the item in cash and thereafter the $150 may not be recovered. However, under §8.4-301 when an item is deposited in the payor bank instead of payment being made over the counter, it is a provisional settlement and may be revoked by the bank and recovery had if the bank properly exercises its right of revocation prior to its midnight deadline (4-104). Therefore the bank having returned the item and demanded the return of the deposit receipt, the bank has right to cancellation of the $750 credit to dealer’s account.

6. Thomas was an accommodation indorser on Smith’s note for $1,000, dated January 12, 1966, due in three months and held by Third National Bank. Two months before maturity Smith paid the Bank the note, but said: “Don’t stamp it paid, I may need to use it again.” Accordingly, the Bank took the money and handed the note to Smith. Thirty days later Smith came back to the Bank and said: “I was too quick about paying off that note, here it is again and I want my thousand dollars back.” Accordingly, the Bank took the note and credited Smith’s account with a thousand dollars. Unknown to anyone Smith had lost heavily in speculation and hence was unable to pay the note at maturity. Is Thomas liable to the Bank?

(NEGOTIABLE INSTRUMENTS) Under UCC and Va.Code §8.3-601(3) the liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument reacquires the instrument in his own right and under §8.3-208 the facts in this case clearly constitute a reacquisition, discharging the accommodation indorser.
For the balance due on the purchase of a tractor, Henry Smith executed and delivered to John Jones his promissory note containing the following language:

"January 1, 1966"

"I promise to pay to the order of John Jones the sum of $1000, to be paid only out of my checking account at the First National Bank in Roanoke, Virginia, in two installments of $500 each, payable on May 1, 1966, and on July 1, 1966, provided that if I fail to pay the first installment on the due date, the entire sum shall become immediately due. (Signed) Henry Smith."

On April 15, 1966, Jones, for value, endorsed the note to William Johnson.

In an action on the note by Johnson against Smith, the latter contends that he had a defense of fraud in the procurement against Jones which he could assert against Johnson, because the note was not a "negotiable" one under the UCC for the following reasons:

(1) It did not recite "For Value Received."

(2) Because of the acceleration clause, the note was not payable at a definite time.

(3) It was not an unconditional promise to pay.

How ought the court to decide on each defense?

(Negotiable Instruments)

(1) There is no need to recite consideration in a note to make it negotiable. See Va. Code 8.3-121 (1) (a).

(2) An acceleration clause does not destroy negotiability under the UCC. See Va. Code 8.3-109 (1) (c).

(3) Payment out of a specific source is not an unconditional promise to pay. Therefore the instrument is non-negotiable and this is a good defense. See Va. Code 8.3-105 (2) (b).

While in the office of Herb Wood, Jack Smart secretly took from Wood's desk a blank check which named Richmond Bank as drawee. On the next day Smart filled in the blanks on the check by dating it and making it payable in the amount of $1,500; by forging Wood's name as drawer; and by writing in his own name as payee. Smart later endorsed the check to Harry Hunt who accepted it in good faith as payment for 100 shares of the common stock of Ajax Corporation, the endorsed certificates for which Hunt delivered to Smart on receipt of the check. Shortly thereafter Hunt presented the check to Richmond Bank and was paid $1,500 in cash. Richmond Bank has now learned that it cannot properly charge Wood's account, and asks you whether it may recover from Hunt the $1,500 paid him. What should your advice be?

(NEGOTIABLE INSTRUMENTS) No, the Richmond Bank cannot recover from Hunt the $1,500 paid to him. Under #8.3-302, Harry Hunt was a holder in due course since he took the instrument for value, in good faith, and without notice of any defense against it. When Hunt presented the instrument to the payee bank and received $1,500 in cash, he made no warranties of presentment and transfer as to the payee bank since, under #8.3-417(1)(b)(iii), Hunt, as a holder in due course, obtained the acceptance (of the payee bank) without knowledge that the drawer's signature was unauthorized. This is the principle of Price v. Neal which held that a drawee of a draft is presumed to know the signature of his customer, the drawee, and, thus, is in a better position to discover the forgery. Therefore, the holder, Hunt, having no knowledge of the forgery at the time of acceptance, is not charged with the normal warranties of a transfer and is perfectly entitled to enforce the acceptance of the drawee bank under #8.3-418. If he thus had a right to enforce the acceptance, such right would be valueless if after enforcing it and obtaining payment, he became obligated to return it for breach of warranty. Therefore, Hunt would not be liable to the drawee bank for breach of warranty.
Joe Cain was supervisor of the shipping department of Machine Mfg., Inc., a large corporation operating in the City of Richmond. In February of 1967, Cain found himself in need of funds and, at the end of that month, submitted to Thomas Abel, the Treasurer of the corporation, a payroll listing which showed as an employee, among many others, "Ben Darius" to whom was allegedly owed $400 for services rendered the corporation during the month of February. In fact, there was no employee named Darius. Relying on the word of Cain, Abel drew and delivered to him a series of Corporate payroll checks, drawn on the corporate account in the Capital Bank, one of which checks was made payable to the order of Darius for $400. Cain took the check, endorsed on its back "Ben Darius", cashed it at the Capital Bank and pocketed the proceeds. He repeated the same procedure at the end of March, April and May. In mid-June, Machine Mfg., Inc., learned of Cain's fraudulent conduct, promptly fired him, and commenced an action against Capital Bank in the Law and Equity Court of the City of Richmond seeking a judgment for $1,600.

Should Machine Mfg., Inc., recover the judgment?

(Negotiable Instruments) No, the Machine Mfg., Inc. should not recover the judgment. Under the U.C.C., §8.4-405(1)(a) the rule is stated that when an impostor induces the maker or drawer to issue a negotiable instrument to him in the name of a payee who is in effect nonexistent or is meant to have no interest in it, an indorsement by any person in the name of the named payee is effective to negotiate the instrument. Under the NIL §9(3), such instruments would have been payable to bearer. The UCC has changed this so that they are made payable to order. The rationale for this provision is that the loss; regardless of the type of fraud which the particular impostor has committed, should fall upon the maker or drawer. The end result of cases decided on this point under the UCC would be the same as those under the NIL, only the route would be different. Thus, the holding 294 Fed. 839 (4th Cir. 1923) would control here. That case held that a drawee bank was not liable for paying an instrument payable to a fictitious payee, because it was a bearer instrument and needed no indorsement. Under the UCC, it would have been payable to order but since it was indorsed, the Capital Bank could not be held liable.

6. Robin Wren was the holder of the following note:

"Sept. 1, 1967

"Thirty days after date I promise to pay to BEARER, or order, $3,000."

"Bob White"

This note bore the accommodation indorsement of Bald Eagle. Robin Wren died before the due date of the note and his daughter and sole heir at law, Sally Wren, presented the note to Bald Eagle on October 30 and demanded payment as the maker was in default. At the time payment was demanded, but before it was made, Tommy Sparrow, a nephew of Robin Wren, exhibited to Bald Eagle what purported to be a will of Robin Wren, by the terms of which that note was bequeathed to Tommy Sparrow, and Sparrow demanded payment to him. Sally Wren denied that the will was genuine and insisted that the note be paid to her. Bald Eagle paid the note to Sally Wren who had possession. Later, in a contested proceeding, the paper writing purporting to be the will of Robin Wren was admitted to probate as the last will and testament of Robin Wren. Whereupon, Tommy Sparrow, who had received the note from Wren's Executor, called upon Bald Eagle to pay the note. Eagle refused to pay and as the maker of the note was insolvent Sparrow sued Eagle on the note.

May Sparrow recover.

(Negotiable Instruments) No. Under §8.3-603 the liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies adequate indemnity or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties.
John Frisk purported to sell a valuable painting to Henry Miller and took in payment therefor Miller's Negotiable promissory note date March 1, 1967, for $1,000, made payable to the order of Frisk on April 1, 1967. Frisk had not in fact owned the painting, but had stolen it from the Valentine Museum. On March 19th, Frisk duly endorsed the note to Frank Rhoads, who had no knowledge of Frisk's improprieties, and who paid Frisk $950 for the note. On April 26th, Rhoads duly endorsed and delivered the promissory note to his good friend, Paul East, as a birthday present. East accepted the note as a gift, secretly knowing that Miller had executed it in reliance on fraudulent misrepresentations of Frisk. On the day after the gift was made, East presented the note to Miller for payment, which was refused. Thereupon, East brought an action on the note against Miller in the Circuit Court of the City of Petersburg.

On the trial of the case all the foregoing facts were proven; and when both parties had rested, Miller moved the Court to strike the evidence of East on the following grounds:

(a) that East had become a holder of the note after its maturity;
(b) that East had become a holder of the note without giving consideration therefor; and
(c) that East had become a holder of the note knowing of Frisk's fraudulent conduct.

How should the Court rule on each ground of the motion?

(NEGO TIA B LE INSTRUMENTS) The court should overrule Miller's motion to strike the evidence as to all grounds relied upon by Miller. Under the UCC, §8-3-201(1), the so-called "Shelter Doctrine" has incorporated and applies here. The doctrine simply is that any person who transfers an instrument transfers whatever rights he has in it. The transfer of rights is not limited to transfers for value. The instrument may be transferred as a gift and the donee acquires whatever rights the donor had. However, this provision cannot be used to permit any holder who has himself been a party to the fraud affecting the instrument, or has notice of any defense against it to wash the paper clean by passing it on to a HDC and then repurchasing it. As it pertains to this case, when Rhoads purchased the note for value in good faith and with no notice of any claim against it, he became a HDC. When East received the note from Rhoads after maturity and as a gift, he acquired the same rights his donor, a HDC, had in it. Therefore, even though he had notice of the fraud, he was not a part to it, and is protected under the "shelter" of this provision. East succeeded to Rhoad's rights as a HDC, cutting off the defense. Therefore, the fact that East became a holder of the note after its maturity, gave no consideration for it, and had knowledge of the fraud, he is protected and the court should overrule Miller's motion to strike his evidence.

Failure of consideration is a personal defense and not good against a HDC or one who takes thro an HDC.

Julia Boswell was the holder of the following note:

"Brandywine, Virginia, October 1, 1967
Thirty days after date I promise to pay to Julia Boswell, or order, One Thousand Dollars, for value received, negotiable and payable at the Brandywine National Bank, Brandywine, Virginia."

"Peter Johnson"

On its due date, Julia Boswell presented the note to the Brandywine National Bank and demanded payment. As Peter Johnson had sufficient funds in his checking account in the bank to pay the note the bank charged his account with $1,000 and paid the note to Julia Boswell. Promptly thereafter the bank mailed the note to Peter Johnson and advised him that it had been paid from his account. Peter Johnson consults you and inquires whether the bank had the right to pay the note and charge his account. In talking to Johnson you learn that he has a valid defense to the note of fraud in the procurement and that he could have successfully defended an action on the note. What would you advise?

(NEGOTIABLE INSTRUMENTS) Johnson should be advised that the bank had properly paid the note. Under §8-3-121 a note which states that it is payable at a bank is not itself an order to the bank to pay it, but the bank may consider it an authorization to pay.